

Supreme Court of Nova Scotia (Family Division)

Citation: *Ward v. Murphy*, 2021 NSSC 207

Paul Ward v. Coralie Murphy

June 15, 2021

SFSNMCA - 96620

- Paul Ward, Self-Represented
- Theresa O’Leary, counsel for Coralie Murphy

Decision:

1. This is a decision on costs, arising from a contested hearing held on Mr. Ward’s application to vary child support. A decision was issued on the 13th day of April, 2021.
2. Both parties made written submissions in support of costs after that decision was rendered.
3. Mr. Ward was self-represented, and therefore did not incur legal fees. Ms. Murphy was represented throughout.
4. Ms. Murphy argues that Mr. Ward was not overall successful. In fact, she argues that the small reduction in child support which results from the court’s decision is out of proportion to the amount of time spent on the hearing and the costs involved. As a result, she says that she is the more successful party.
5. She claims costs of \$27,313.00 under Tariff A, Scale 3 based on a 6-day hearing. This includes \$2,000.00 per day, as set out under Tariff A.
6. Mr. Ward did not advance a claim for costs, rather his submissions are a rebuttal of Ms. Murphy’s claims. He says that Ms. Murphy’s counsel wasted time before, and during, the hearing on irrelevant issues, and that she should not be awarded costs as a result.
7. Mr. Ward also raises a number of issues in his submissions which are irrelevant to the decision I have to make. His arguments relate to issues which predate the hearing on which my decision rests. That is a theme with Mr. Ward. As I indicated during the hearing, I am not revisiting earlier decisions by other judges. Nor am I revisiting actions taken by either party before this hearing.
8. *Rule 77* governs costs awards in the Supreme Court of Nova Scotia. Costs usually follow the cause. In other words, the successful party generally receives an award of costs. In this case, although Mr. Ward was successful in proving a change in circumstances, his employment income was still imputed at the same level as in the earlier order, and an

additional amount of income from his company was attributed on top of that. The end result was only a marginal reduction in child support payable.

9. Ms. Murphy was successful in demonstrating that many of the company expenses Mr. Ward deducted for tax purposes personally benefited him and should be included as income for child support purposes. That led to income being attributed to him under section 18 of the *Child Support Guidelines*. Ms. Murphy was also successful in obtaining a prohibition on further applications without leave of the court, under section 54B of the *Parenting and Support Act*.
10. There was no “successful party” on the issue of the \$300.00 deducted from costs for a prior hearing. Mr. Ward wanted that money returned to him, or at least a declaration that it was improperly withheld from the costs payable to him by Ms. Murphy. Ms. Murphy says that there was an agreement between counsel to withhold that \$300.00, as it was owed to her for unpaid child support.
11. While I did find that the \$300.00 was for payment of outstanding child support, I also noted that the 2018 order did not address the outstanding amount. This was an oversight. The matter should have been brought back before Justice Grogan, but as I noted in my decision, after a lengthy contested hearing, that probably wasn’t economically feasible. Further, counsel resolved the issue by agreement, though Mr. Ward denies ever agreeing to the holdback.
12. In any event, not much rises or falls on that issue in terms of costs, but it illustrates the amount of time and resources spent addressing minor grievances raised by Mr. Ward.
13. I have reviewed the case of **Illingworth v. Illingworth**, 2020 NSSC 371, in which Forgeron, J. awarded costs in the context of Mr. Illingworth’s litigation conduct, which resulted in unnecessary expense. This included not filing documents when scheduled and providing exhibits that were not properly copied. Mr. Illingworth also withheld information about his current job status.
14. Mr. Ward’s litigation conduct was also problematic. He only filed the appropriate documents after several conferences to address disclosure. He advanced irrelevant arguments, despite the court’s numerous cautions. He argued repeatedly with the court’s rulings on evidence. And he made serious (and unsubstantiated) allegations of misconduct on the part of Mr. Murphy’s counsel. Many of his outbursts required the court to break, so that Mr. Ward could cool down.
15. Mr. Ward suggests that the hearing was extended by Ms. Murphy’s counsel, rather than him. He cites the fact that the accountant’s file, which was included in Ms. Murphy’s exhibit book, was not copied in the same sequence as the original file. This became apparent when the accountant testified. After allowing the accountant some time to collate

and compare the two files, it also became apparent that there were some pages missing from the exhibit book Mr. Ward lays the blame for this with Ms. Murphy's counsel, and suggests that she deliberately left out a page containing an oil bill for the garage.

16. I reject the suggestion that the problems encountered with the accountant's file were deliberate. Further, that file was evidence that should have been advanced by Mr. Ward in support of his claim. The cost of arranging and paying for duplication of the file should not have fallen to Ms. Murphy.
17. However, I have already censured Mr. Ward for his litigation conduct in granting Ms. Murphy's request under section 54B of the *PSA*. It would not be appropriate to penalize him again at the costs stage.
18. Although Mr. Ward proved a change of circumstances and a slight reduction in income, the end result was only a nominal reduction in child support. Ms. Murphy was successful in demonstrating that many of the expenses deducted for corporate tax purposes benefit Mr. Ward personally, so that pre-tax income was attributed to him. She was also successful on the request under section 54B of the *PSA*.
19. A costs award must "do justice" between the parties. In this case, Ms. Murphy was forced to respond to a variation application which was filed not long after the 2018 order was issued. That order imputed income, which was the reason for Mr. Ward's request to vary. He claimed that he didn't earn anything near \$120,000.00/year. I found that he did.
20. There is no amount involved in this case, other than the amount of child support from the 2018 order. Ms. Murphy suggests I use the "rule of thumb" of \$20,000.00 per day, which over 6 days equates to \$120,000.00 (coincidentally the amount of income at issue). I have nothing from Ms. Murphy to confirm what her legal fees amount to, nor have any offers to settle been brought to my attention.
21. I prefer to use the Tariffs where possible, to ensure consistency in awards. I will therefore use the income at issue as the amount involved. This file was not so complex that I would use Scale 3. Given the limited success of Mr. Ward, I have used Scale 1, which reduces costs payable by 25 per cent. The hearing lasted 6 days, so the \$2,000.00 per day will be added.
22. I therefore award costs to Ms. Murphy in the amount of \$9,188.00, inclusive of HST. In addition, Ms. Murphy is entitled to \$2,000.00 per day of trial, for an additional \$12,000.00 and \$250.00 (inclusive of HST) for disbursements, particularly photocopying expenses.
23. I direct that Ms. Murphy pay the discovery fee for the accountant. The invoice provided by Mr. Ward doesn't clearly indicate the amount owing for that hearing (as it also reflects time spent in court). The need to discover the accountant was driven by Mr. Ward's initial

failure to fully disclose all of the necessary financial information needed by the court and Ms. Murphy to assess his claim. I am therefore prepared to order reimbursement of only part of the invoice. Ms. Murphy must pay \$750.00 in total for the discovery costs, inclusive of HST. That sum will be deducted from costs owing to her.

24. The net amount owing by Mr. Ward is \$20,688.00. Costs are payable at a rate of \$1,000.00 per month, commencing July 1, 2021 and continuing until paid in full. The order for costs is enforceable through the Maintenance Enforcement program.

25. Ms. O’Leary is requested to submit an order reflecting this costs decision.

MacLeod-Archer, J.